

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1371 of 1980

For Approval and Signature:

Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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NEW INDIA ASSURANCE CO.LTD.

Versus

MINOR DWARKABEN, THRO'GUARDIANFATHER TUKARAM SHIVRAM PATIL

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Appearance:

Mr.Ajay R.Mehta for MR RAJNI H MEHTA for Appellant.

MR KN VALIKARIMWALA for Respondent No. 1

SERVED for Respondent No. 2, 4, 5

MR KS SHUKLA for Respondent No. 3

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CORAM : MR.JUSTICE M.C.PATEL

Date of decision: 13/02/98

ORAL JUDGEMENT

1. The appellant-Insurance Company has filed this appeal against the judgment and award dated 3.5.1980 passed by the Motor Accident Claims Tribunal No.1, Bharuch, awarding Rs.14,000/- as compensation with interest at 6 per cent per annum from the date of the

petition till realisation to the minor-applicant, Dwarkaben, in Motor Accident Claim Petition No.5 of 1979.

2. It is not in dispute that the minor-applicant, Dwarkaben, was travelling in Truck No.GTH 7353 on 26.10.1978 and that while the truck was returning from Ankaleshwar and was going on the State Highway near village Dadhal, the driver had lost control and the truck had landed into a ditch. Dwarkaben was thrown off from the truck and had received fracture-injury.

3. The Insurance Company disputed their liability on the ground that Dwarkaben was a gratuitous passenger. However, the Tribunal found that she had been detained for cleaning the truck and as such vis-a-vis the truck and the persons using it, she was a bona fide employee. There was evidence before the Tribunal on the basis of which the Tribunal recorded the finding and there is no reason to take a different view, on appreciation of the evidence. It is not in dispute that, if the finding that Dwarkaben was a bona fide employee is accepted, the Insurance Company will be liable to satisfy the award. In the circumstances, there is no substance in the appeal, and the same is dismissed. No order as to costs.

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